

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**Appeal No. 445 of 2019 & IA No. 1017 of 2021  
Appeal No. 188 of 2020 & IA No. 1038 of 2021  
and  
Appeal No. 224 of 2021**

**Dated: 13<sup>th</sup> September, 2021**

**Present: Mr. Ravindra Kumar Verma, Technical Member  
Mr. Justice R.K. Gauba, Judicial Member**

**Appeal No. 445 of 2019 & IA No. 1017 of 2021**

**In the matter of:**

**Power Grid Corporation of India Limited,  
“Saudamini”, Sector 29, Gurgaon – 122001  
Haryana**

**.... Appellant(s)**

**Versus**

- 1. Central Electricity Regulatory Commission,  
Through its Secretary,  
3rd and 4th Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001** **.... Respondent No.1**
  
- 2. Rajasthan Rajya Vidyut Prasaran Nigam  
Ltd., Through its Chief Engineer,  
Vidyut Bhawan, Vidyut Marg,  
Jaipur – 302005, (Rajasthan)** **.... Respondent No.2**
  
- 3. Ajmer Vidyut Vitran Nigam Ltd  
Through its Managing Director  
Vidyut Bhawan, Janpat, Jyoti Nagar  
Jaipur 302005** **.... Respondent No.3**
  
- 4. Jaipur Vidyut Vitran Nigam Ltd.  
Through its Managing Director  
Vidyut Bhawan, Janpath, Jyoti Nagar,  
Jaipur 302005** **.... Respondent No.4**

5. **Jodhpur Vidyut Vitran Nigam Limited  
Through its Managing Director  
Vidyut Bhawan, Janpath, Jyoti Nagar,  
Jaipur - 302005** .... **Respondent No.5**
6. **Himachal Pradesh State Electricity Board  
Through its Managing Director  
Vidyut Bhawan, Kumar House Complex  
Building II, Shimla – 171004 (HP)** .... **Respondent No.6**
7. **Punjab State Electricity Board  
Through its Chief Engineer  
220 kV Sub Station  
Ablowal, Patiala - 147001** .... **Respondent No.7**
8. **Haryana Power Purchase Centre  
Through its Chief Engineer  
Shakti Bhawan, Energy Exchange  
Room No. 446, Top Floor  
Sector – 6 Panchkula – 134109  
Haryana** .... **Respondent No.8**
9. **Power Development Department,  
Government of Jammu & Kashmir  
Through its Secretary  
Janipura Grid Station,  
Jammu (Tawi) – 180007** .... **Respondent No.9**
10. **Uttar Pradesh Power Corporation Ltd.  
Through its Chairman & Managing Director  
10<sup>th</sup> Floor, Shakti Bhawan Extension,  
14, Ashok Marg,  
Lucknow – 226001 (UP)** .... **Respondent No.10**
11. **Delhi Transco Ltd  
Through its Director  
Kotal Road (Near ITO)  
New Delhi -110002** .... **Respondent No.11**
12. **BSES Yamuna Power Ltd. (BYPL)  
Through its Chairman & Managing Director  
Shakti Kiran NLDG., Karkardooma,  
Delhi -110092** .... **Respondent No.12**

13. **BSES Rajdhani Power Ltd (BRPL)**  
Through its Chairman & Managing Director  
BSES Bhawan, 2<sup>nd</sup> Floor, B Block  
Behind Nehru Place Bus Terminal  
Nehru Place, New Delhi-110 019 .... Respondent No.13
14. **TATA Power Delhi Distribution Limited (TPDDL),**  
Through its Chairman & Managing Director  
33 KV Substation BLDG., Hudson Lane,  
Kinsway Camp, Delhi – 110009 .... Respondent No.14
15. **Chandigarh Administration**  
Through its Principal Secretary  
4<sup>th</sup> Floor, UT Secretariat  
Sector -9, Chandigarh – 160 009 .... Respondent No.15
16. **Uttarakhand Power Corporation Ltd.**  
Through its Chairman & Managing Director  
Urja Bhawan, Kanwali Road,  
Near Balli Wala Chowk  
Dehradun, Uttarakhand-248001 .... Respondent No.16
17. **North Central Railway**  
Allahabad  
Through its Divisional Railway manager  
DRM Office, Nawab Yusuf Road  
Allahabad, Uttar Pradesh – 211 011 .... Respondent No.17
18. **New Delhi Municipal Council**  
Through its Secretary  
Palika Kendra, Sansad Marg  
New Delhi – 110001 .... Respondent No.18
19. **Uttar Pradesh Power Transmission Corporation Ltd**  
Through its Chairman & Managing Director  
11<sup>th</sup> Floor, Shakti Bhawan, 14-Ashok Marg,  
Lucknow - 226001 .... Respondent No.19

**Counsel on record for the Appellant(s):** Mr.Anand K. Ganesan  
Ms.Swapna Seshadri  
Mr. Aditya H. Dubey

**Counsel on record for the Respondent(s):** Ms. Sangeeta Bharti  
Mr. Sushil KumarSingh  
for R-11

Mr. Raj Bahadur Sharma  
for R-13 & 19

Mr. Mohit K. Mudgal  
Mr. Sachin Dubey for R-19

**Appeal No. 188 of 2020 & IA No. 1038 of 2021**

**In the matters of:**

**Power Grid Corporation of India Limited,  
“Saudamini”, Sector 29, Gurgaon – 122001  
Haryana**

.... **Appellant(s)**

**Versus**

**1. Central Electricity Regulatory Commission,  
Through its Secretary,  
3rd and 4th Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001**

.... **Respondent No.1**

**2. Assam Electricity Grid Corporation Limited  
(Formerly Assam State Electricity Board)  
Through its Chairman & Managing Director  
Bijulee Bhawan, Paltan Bazar,  
Guwahati–781 001, Assam**

.... **Respondent No.2**

**3. Meghalaya Energy Corporation Limited,  
(Formerly Meghalaya State Electricity  
Board),  
Through its Chairman & Managing Director,  
Short Round Road,  
“Lumjingshai”, Shillong-793 001,  
Meghalaya**

.... **Respondent No.3**

4. **Government of Arunachal Pradesh,  
Through its Secretary  
Itanagar, Arunachal Pradesh – 791111** .... **Respondent No.4**
  
5. **Power and Electricity Department,  
Government of Mizoram,  
Through its Secretary  
Aizawl, Mizoram – 796001** .... **Respondent No.5**
  
6. **Manipur State Electricity Distribution  
Company Ltd  
(Formerly, Electricity Department,  
Government of Manipur),  
Through its Chairman & Managing Director  
Keishampat,  
Imphal – 795004** .... **Respondent No.6**
  
7. **Department of Power,  
Government of Nagaland,  
Through its Secretary  
Kohima, Nagaland – 797001** .... **Respondent No.7**
  
8. **Tripura State Electricity Corporation  
Limited,  
Through its Chairman & Managing Director,  
Vidyut Bhawan,  
North Banamalipur, Agartala,  
Tripura (W) –799 001** .... **Respondent No.8**
  
9. **Himachal Pradesh State Electricity Board,  
Through its Managing Director  
Vidyut Bhawan, Kumar House Complex  
Building II Shimla -171004 (HP)** .... **Respondent No.9**
  
10. **Punjab State Power Corporation Limited  
Through its Chief Engineer,  
Shed No. T-1-A, Thermal Design,  
Near 22 No. Phatak,  
Patiala, Punjab -147001** .... **Respondent No.10**
  
11. **Haryana Power Purchase Centre  
Through its Chief Engineer,**

- Shakti Bhawan, Energy Exchange,  
Room No. 446, Top Floor,  
Sector - 6, Panchkula - 134109  
Haryana** .... **Respondent No.11**
- 12. Power Development Department,  
Government of Jammu & Kashmir  
Through its Secretary  
Janipura Grid Station, Jammu (Tawi) –  
180007** .... **Respondent No.12**
- 13. Uttar Pradesh Power Corporation Limited,  
Through its Chairman and Managing  
Director  
10<sup>TH</sup> Floor, Shakti Bhawan Extn,14,Ashok  
Marg, Lucknow -226001** .... **Respondent No.13**
- 14. Delhi Transco Limited,  
Through its Director  
Shakti Sadan, Kotal Road (Near ITO),  
New Delhi – 110002** .... **Respondent No.14**
- 15. Chandigarh Administration,  
Through its Principal Secretary  
4<sup>th</sup> Floor, UT Secretariat  
Sector -9, Chandigarh – 160 009** .... **Respondent No.15**
- 16. Uttrakhand Power Corporation Limited,  
Through its Chairman and Managing  
Director  
Urja Bhawan, Kanwali Road  
Near Balli Wala Chowk, Dehradun  
Uttarakhand – 248 001** .... **Respondent No.16**
- 17. Rajasthan Power Procurement Centre,  
Through its Chief Engineer  
Vidyut Bhawan, Janpath, Jaipur 302005** .... **Respondent No.17**
- 18. Ajmer Vidyut Vitran Nigam Ltd,  
Through its Managing Director  
Vidyut Bhawan, Janpat, Jyoti Nagar  
Jaipur - 302005** .... **Respondent No.18**

19. Jodhpur Vidyut Vitran Nigam Ltd,  
Through its Managing Director  
Vidyut Bhawan, Janpat, Jyoti Nagar  
Jaipur - 302005 .... Respondent No.19
20. Jaipur Vidyut Vitran Nigam Ltd,  
Through its Managing Director  
Vidyut Bhawan, Janpat, Jyoti Nagar  
Jaipur - 302005 .... Respondent No.20
21. North Central Railway, Allahabad  
Through Divisional Railway Manager  
DRM Office, Nawab Yusuf Road,  
Allahabad, Uttar Pradesh-211011 .... Respondent No.21
22. BSES Yamuna Power Limited  
Through its Chairman and Managing  
Director  
2<sup>nd</sup> Floor, B Block, Shakti Kiran Building,  
(Near Karkadooma Court)  
New Delhi- 110092 .... Respondent No.22
23. BSES Rajdhani Power Limited  
Through its Chairman and Managing  
Director  
BSES Bhawan, 2<sup>nd</sup> Floor,  
B Block, Behind Nehru Place Bus Terminal,  
Nehru Place, New Delhi – 110019 .... Respondent No.23
24. Tata Power Delhi Distribution Limited  
Through its Chairman and Managing  
Director  
33 kV S/Stn Building,  
Hudson Lane, Kingsway Camp,  
New Delhi – 110009 .... Respondent No.24
25. New Delhi Municipal Corporation  
Through its Secretary  
Palika Kendra, Sansad Marg,  
New Delhi – 110001 .... Respondent No.25

**Counsel on record for the Appellant(s):** Mr.Anand K. Ganesan  
Ms.Swapna Seshadri  
Mr. Aditya H. Dubey

**Counsel on record for the Respondent(s):** Mr. Raj Bahadur Sharma  
for R-22 & 23

Mr. Mohit K. Mudgal  
Mr. Sachin Dubey for R-22

**Appeal No. 224 of 2021**

**In the matters of:**

**Power Grid Corporation of India Limited,  
“Saudamini”, Sector 29, Gurgaon – 122001  
Haryana**

.... **Appellant(s)**

**Versus**

**1. Central Electricity Regulatory Commission,  
Through its Secretary,  
3rd and 4th Floor, Chanderlok Building  
36, Janpath, New Delhi – 110001**

.... **Respondent No.1**

**2. Karnataka Power Transmission Corporation  
Ltd., (KPTCL)  
Through its Chairman & Managing Director  
Kaveri Bhavan,  
Bangalore – 560 009**

.... **Respondent No.2**

**3. Transmission Corporation of Andhra  
Pradesh Ltd.,  
Through its Chairman & Managing Director  
(APTRANSCO), Vidyut Soudha,  
Hyderabad – 500082**

.... **Respondent No.3**

**4. Kerala State Electricity Board (KSEB),  
Through its Chairman & Managing Director  
Vaidyuthi Bhavanam, Pattom,  
Thiruvananthapuram – 695 004**

.... **Respondent No.4**

**5. Tamil Nadu Generation and Distribution**



- Corporation Ltd. (TANGEDCO),  
(Earstwhile Tamil Nadu Electricity Board),  
Through its Chairman & Managing Director  
NPKRR Maaligai, 800, Anna Salai,  
Chennai – 600 002 .... Respondent No.5
6. Electricity Department  
Through its Secretary  
Government of Goa, Vidyuti Bhawan,  
Panaji, Goa 403001 .... Respondent No.6
7. Electricity Department,  
Through its Secretary  
Government of Pondicherry,  
Pondicherry – 605001 .... Respondent No.7
8. Eastern Power Distribution Company of  
Andhra Pradesh Limited, (APEPDCL),  
Through its Chairman & Managing Director  
P&T Colony, Seethmmadhara,  
Vishakhapatnam, Andhra Pradesh .... Respondent No.8
9. Southern Power Distribution Company of  
Andhra Pradesh Limited, (APSPDCL),  
Through its Director  
Srinivasasa Kalyana Mandapam Backside,  
Tiruchanoor Road, Kesavayana Gunta,  
Tirupati-517 501, Andhra Pradesh .... Respondent No.9
10. Central Power Distribution Company of  
Andhra Pradesh limited,  
(APCPDCL), Corporate Office, Mint  
Compound,  
Hyderabad – 500 063 .... Respondent No.10
11. Northern Power Distribution Company of  
Andhra Pradesh Limited, (APNPDCL),  
Through its Chairman & Managing Director  
Opp. NIT Petrol Pump, Chaitanyapuri,  
Kazipet, Warangal – 506 004,  
Andhra Pradesh .... Respondent No.11
12. Bangalore Electricity Supply Company Ltd.

- (BESCOM),  
Through its Managing Director  
Corporate Office, K.R.Circle,  
Bangalore – 560 001, Karanataka .... Respondent No.12
13. Gulbarga Electricity Supply Company  
Ltd.(GESCOM),  
Through its Chairman & Managing Director  
Station Main Road,  
Gulbarga, Karnataka .... Respondent No.13
14. Hubli Electricity Supply Company Ltd.  
(HESCOM),  
Through its Managing Director  
Navanagar, PB Road,  
Hubli, Karnataka - 580025 .... Respondent No.14
15. MESCOM Corporate Office,  
Through its Managing Director  
Paradigm Plaza, AB Shetty Circle,  
Mangalore – 575 001,  
Karnataka .... Respondent No.15
16. Chamundeswari Electricity Supply  
Corporation Ltd. (CESC),  
# 927, L J Avenue Ground Floor,  
New Kantharaj Urs Road, Saraswatipuram,  
Mysore – 570 009, Karnataka .... Respondent No.16
17. Coastal Energen Private Limited,  
5th Floor, Buhari Towers, No. 4, Moores  
Road Chennai – 600 006, Tamil Nadu .... Respondent No.17
18. Ind-Bharath Power (Madras) Limited,  
Through its Chairman & Managing Director  
Plot No 30-A, Road No 1, Film Nagar,  
Jubilee Hills Hyderabad – 500 033  
Andhra Pradesh .... Respondent No.18
19. Transmission Corporation of Telangana  
Limited,  
Through its Chairman & Managing Director  
Vidhyut Sudha, Khairatabad, .... Respondent No.19

**Hyderabad, 500082**

**Counsel on record for the Appellant(s):      Mr. Anand K. Ganesan  
   Ms.Swapna Seshadri  
   Mr. Aditya H. Dubey**

**Counsel on record for the Respondent(s): Mr. S. Vallinayagam for R-5**

**JUDGMENT (ORAL)**

**PER MR.RAVINDRA KUMAR VERMA, TECHNICAL MEMBER**

1. The Appeal No. 445 of 2019, Appeal No. 188 of 2020 and Appeal No. 224 of 2021 has been filed under Section 111(1) of the Electricity Act, 2003 by Powergrid Corporation of India Limited (hereinafter referred as **“the Appellant”**) against the impugned order dated 01.10.2019, 25.06.2019 and 01.11.2019 respectively passed by the Central Electricity Regulatory Commission (hereinafter referred as **“the Central Commission/Respondent No.1”**), in Petition No. 268/TT/2018, in Petition No. 242/TT/2018 and in Petition No. 367/TT/2018.
2. The issue in these appeals is primarily pertaining to the compliance of the Tariff Regulations, 2014 notified by the Central Electricity Regulatory Commission (CERC/Central Commission) in relation to the payment of Incidental Expenses During Construction (IEDC) on account of time over-run allowed by Central Commission as being beyond the control of the transmission company which in this case is Power Grid Corporation of India Limited (PGIL).

3. The Regulation 11 (b) (2) of the Tariff Regulations, 2014 reads as under:

*“11. Interest during construction (IDC), Incidental Expenditure during Construction (IEDC)*

*(A) Interest during Construction (IDC): .....*

*(B) Incidental Expenditure during Construction (IEDC):*

*(1) .....*

*(2) In case of additional costs on account of IEDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required to furnish detailed justification with supporting documents for such delay including the details of incidental expenditure during the period of delay and liquidated damages recovered or recoverable corresponding to the delay:*

***Provided that if the delay is not attributable to the generating company or the transmission licensee, as the case may be, and is due to uncontrollable factors as specified in regulation 12, IEDC may be allowed after due prudence check:***

*Provided further that where the delay is attributable to an agency or contractor or supplier engaged by the generating company or the transmission licensee, the liquidated damages recovered from such agency or contractor or supplier shall be taken into account for computation of capital cost.”*

4. The Central Commission in its Impugned Orders has allowed the time over-run but have restricted the payment of IEDC on account of time over-run only to the extent of 10.75% / 5% / 2.95% of the hard cost (RCE) respectively.
5. The grievance of the Appellant is that in view of the express provision given in the Regulation, 2014 notified by the Central

Commission to the extent that “if the delay is not attributable to the generating company or the transmission licensee as the case may be, and is due to uncontrollable factors as specified in Regulation 12 of these regulations, IDC may be allowed after due prudence check.”, the Appellant has submitted that the actual IEDC should have been allowed by the Central Commission as per the information furnished by the Appellant in the prescribed format submitted to the Central Commission along with the petition and also shown at Form 12-A.

6. The Appellant also further submits that there is no perusal, no discussions regarding the submission made by the Appellant giving the detailed justification element-wise regarding the IEDC during time over-run and the Central Commission has simply recorded that IEDC be paid at the rate of 10.75%/5%/2.95% of the hard cost (RCE).
7. The Appellant has also referred to the judgment passed by this Tribunal on this very subject of IEDC being paid as per actual due to time over-run in various cases. In these judgments the Tribunal has brought out a clarity on the aspect that the IEDC on account of time over-run having been allowed by the Central Commission shall be paid as per actual after due prudence check. The relevant portion of the judgments is as under:

**(a) Judgment dated 02/12/2019 passed by this Tribunal in Appeal No's 95 & 140 of 2018;**

*“7.16 In light of the above, we are of the considered opinion that Central Commission has not considered the IEDC for*

*the reference assets correctly in line with provisions of its own regulations which cannot be sustained in the eyes of law. In catena of judgments of Hon'ble Supreme Court and this Tribunal, it has been held that the Regulations framed by the Commissions are binding for all stakeholders including the Commission itself. The Regulations framed under the Act, in no way, mandate the Central Commission to restrict the IEDC to 5% of the original estimated hard cost.*

*7.17 Accordingly, we hold that IEDC should be computed only on actual basis after due prudence check based on the data submitted by the Appellant in accordance with the Tariff Regulations.*

### ORDER

*For the forgoing reasons, we are of the considered view that issues raised in the present appeals being Appeal Nos. 95 of 2018 & 140 of 2018 have merits and hence appeals are allowed.*

*The impugned orders dated 29.07.2016 in Petition No. 46/TT/2014 and order dated 05.10.2017 in Petition No. 02/RP/2017 passed by Central Electricity Regulatory Commission are hereby set aside to the extent challenged in the Appeal. The matter is remitted back to the Central Electricity Regulatory Commission with a direction to allow IEDC in accordance with the Tariff Regulations. No order as to costs.”*

**(b) Judgment dated 22/04/2021 passed by this Tribunal in Appeal No. 55 of 2020;**

*“12. The prime argument of the appellant is that the entire time over-run having been condoned there was no justification whatsoever for the benefit of IEDC to be so restricted. It is the submission that the IDC and IEDC are required to be determined under the relevant Tariff Regulations, 2014 based on the prudence check, it being contingent on the decision taken on the aspect of time over-run.*

.....

19. *For the above-mentioned reasons, we find no substance in the grounds of contest pleaded by the respondent to the appeal. We follow the previous decisions of this tribunal rendered on 02.12.2019 and 09.03.2021 in Appeal Nos. 95 and 140 of 2018 and Appeal No. 63 of 2020 respectively. There being no such limitation in the Regulation to the grant of entire benefit of IEDC, the period of delay in entirety having been condoned, the restriction to 10.75 % was wholly unjustified and improper. The impugned order to that extent is, thus, set aside. The Central Commission is directed to pass consequential fresh order on this subject within a period of four weeks hereof subject, of course, to prudence check.*

20. *The Appeal is disposed of in above terms. No order as to costs.”*

**(c) Judgment dated 09.03.2021 passed by this Tribunal in Appeal No. 63 of 2020**

*“10. We are of the opinion that the observations made by the Central Commission wherein they have limited the payment of IEDC to 5% is not in accordance with the Regulations, is wrong and bad in law. However, since the entire delay period has not been condoned, therefore, there is a case where in the Central Commission can adjudicate on the proportional payment corresponding to the part delay condoned out of the total delay.*

*11. Having regard to the facts and circumstances of the case as stated above, Appeal filed by the Appellant is allowed. The Impugned Order dated 20.11.2019 passed by the Central Electricity Regulatory Commission 337/TT/2018 is hereby set aside. We direct the Central Commission to consider the matter afresh in light of observations and bearing in mind the principles laid down in the judgment dated 02.12.2019 passed by this Tribunal in Appeal Nos. 95 of 2018 & 140 of 2018 and pass fresh consequential order in accordance with law.*

*The Appellant may approach the Central Commission at the time of truing up for implementation of this order.*

*12. The appeal is disposed of in above terms.”*

**(d) Order dated 14.07.2021 passed by this Tribunal in Appeal No. 401 of 2021**

*“Heard Ms.Swapna Seshadri, learned counsel arguing for the Appellant. The main issue in the case seems to be the restriction of the claim of IEDC as 5% of the hard cost even when time overrun has been condoned. The issue is no more resintergra. The fact remains that there are three judgments of this Tribunal on the very same issue pertaining to different transmission lines/systems. This Tribunal had an occasion to opine that once the delay in the execution of the transmission system is condoned, there cannot be restriction of IEDC as a percentage of hard cost. In that context, we opine that the decision of this Tribunal in the following judgments shall apply to this case mutatis mutandis:1. Judgment dated 02.12.2019 in Appeal Nos. 95 & 140 of 2018; 2. Judgment dated 09.03.2021 in Appeal No. 63 of 2020; 3. Judgment dated 22.04.2021 in Appeal No. 55 of 2020*

*Before this appeal is allowed in line with the above-mentioned judgments rendered by this Tribunal on the very same issue, it is noticed that the Respondents in spite of service of notice on three occasions have neither appeared nor filed any representations / reply. Therefore, we presume that being aware of the above earlier judgments of the Tribunal, the Respondents felt that they need not contest the matter. Accordingly, the Appeal is allowed and the matter is remanded back to the Central Commission for re-determination of IEDC. Appeal is disposed off.”*

8. Therefore the submissions of the Appellant is that in view of the clarity on the subject that IEDC on account of time over-run having been allowed by the Central Commission has to be as per actual



and not limited to 10.75%/5%/2.95% of the hard cost (RCE), there was no reason for the Central Commission not to allow the same to the Petitioner in these cases.

9. The Appellant further submits that the judgment dated 02.12.2019 has already been complied with by the Central Commission while passing order dated 04/02/2020 in Petition No. 1/TT/2019.
10. ***Per contra***, the learned counsel representing UPPTCL/Respondent No. 19 and BRPL/Respondent No.13 in Appeal No. 445 of 2019 and Appeal No. 188 of 2020 submitted that the appeal should not be entertained by this Tribunal on account of following:
11. The control period in which the judgments were passed by this Tribunal quoted by the Appellant in their submissions was for the control period 2009-14 for which the Regulation 2009 notified by the Central Commission was applicable. He further submits that there is a difference between Regulation 2009 and 2014 to the extent that whereas the Regulation 2009 notified by CERC does not have express provision in regard to payment of IEDC due to time over-run but in case of 2014 Regulations there is a express provision regarding the payment of IEDC on account of time over-run. Therefore, the applicability of the judgment dated 02.12.2019, passed by this Tribunal, in these cases is not correct and have been wrongly referred to by the Appellant. The relevant extract of the 2009 and 2014 Regulations reads as under:-

*“9. Capital Cost: (1) The Capital cost as determined by the Commission after prudence check in accordance with this*

*regulation shall form the basis of determination of tariff for existing and new projects.*

*(2) The Capital Cost of a new project shall include the following:*

*(a) the expenditure incurred or projected to be incurred up to the date of commercial operation of the project;*

*(b) Interest during construction and financing charges, on the loans (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or(ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed;*

*(bi) Any gain or loss on account of foreign exchange risk variation pertaining to the loan amount availed during the construction period shall form part of the capital cost*

*(c) Increase in cost in contract packages as approved by the Commission;*

*(d) Interest during construction and incidental expenditure during construction as computed in accordance with Regulation 11 of these regulations;*

*(e) capitalised Initial spares subject to the ceiling rates specified in these regulations;*

*(f) expenditure on account of additional capitalization and de-capitalisation determined in accordance with Regulation 14 of these regulations;*

*(g) adjustment of revenue due to sale of infirm power in excess of fuel cost prior to the COD as specified under Regulation 18 of these regulations; and*

*(h) adjustment of any revenue earned by the transmission licensee by using the assets before COD.”*

12. The learned counsel representing the UPPTCL/Respondent No. 19 and BRPL/Respondent No.13 in Appeal No. 445 of 2019

submits that the Appellant in their petition filed before the Central Commission has not specifically claimed IEDC due to time over-run.

13. The Respondent UPPTCL/Respondent No.19 further submitted that the Appellant has also not made any specific prayer in its Petition No. 268ITTI2018 regarding claim of IEDC on account of time over-run. In view of this fact, the learned counsel submitted that the appeal need not to be considered by this Tribunal and should be rejected.
14. The learned counsel submitted that the Appellant has filed this appeal under Section 111 of the Electricity Act, 2003 which reads as under:-

*“Section 111. (Appeal to Appellate Tribunal): --- (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:*

*Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:*

*Provided further that wherein any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.*

*(2) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be*

*in such form, verified in such manner and be accompanied by such fee as may be prescribed:*

*Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.*

*(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*

*(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.*

*(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:*

*Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.*

*(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.”*

15. It is the case of the Respondents that since the Appellant has neither made any specific claim for payment of IEDC as per actuals, on account of time over-run having been granted by the Central Commission nor any special prayer has been made on

this account in his petition filed before the Central Commission, the Appellant does not have a case for coming before this Tribunal with an appeal for a claim which has not been made in their petition when they went before the Central Commission.

16. The learned counsel representing Respondent No.5/TANGEDCO in Appeal No. 224 of 2021 submitted that as per the requirement of the provisions of the Tariff Regulation 2014 notified by CERC, the Appellant was to submit a detailed justification for making their claim on account of IEDC due to time over-run but the same has not been made by the Appellant in their petition before the Central Commission. This being the primary argument of the submissions that the Appellant was to submit detailed justification for making their claim on account of IEDC due to time over-run but the same has not been made by the Appellant in their petition before the Central Commission. In the absence of any detailed justification as per the provisions of the Regulation, 2014, the Central Commission has rightly decided in capping the IEDC due to time over-run 2.5% of the hard cost (RCE).

### **Finding and analysis**

17. Having heard the Appellant, the learned counsel the learned counsel representing UPPTCL/Respondent No. 19 and BRPL/Respondent No.13 in Appeal No. 445 of 2019 and the learned counsel representing Respondent No.5/TANGEDCO in Appeal No. 224 of 2021 and having gone through their written submissions filed by them, materials/documents placed before us

and the appeal filed by the Appellant, our observations are as under:

18. The issue in the appeal is pertaining to the provisions of the Regulation, 2014 notified by the Central Commission with regard to the payment of IEDC due to time over-run.
19. We note the fact that the Central Commission has already allowed the time over-run in these cases.
20. The Regulation 11 (b) (2) of the Tariff Regulation 2014 notified by the CERC reads as under:

*“11. Interest during construction (IDC), Incidental Expenditure during Construction (IEDC)*

*(A) Interest during Construction (IDC): ..... ..*

*(B) Incidental Expenditure during Construction (IEDC):*

*(1) .....*

*(2) In case of additional costs on account of IEDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required to furnish detailed justification with supporting documents for such delay including the details of incidental expenditure during the period of delay and liquidated damages recovered or recoverable corresponding to the delay:*

**Provided that if the delay is not attributable to the generating company or the transmission licensee, as the case may be, and is due to uncontrollable factors as**

**specified in regulation 12, IEDC may be allowed after due prudence check:**

*Provided further that where the delay is attributable to an agency or contractor or supplier engaged by the generating company or the transmission licensee, the liquidated damages recovered from such agency or contractor or supplier shall be taken into account for computation of capital cost.”*

21. We also note that the submissions made by the Appellant that the detailed narration as given in their petitions No. 1/TT/2019 covers the liability that has been created on PGCIL/the Appellant on account of time over-run and the details of the same have been given in the prescribed format along with the petition at Form 12-A.
22. We also note that the Central Commission while passing the order dated 04.02.2019 in petition No.1/TT/2019 have implemented the judgment passed by this Tribunal in Appeal Nos. 95 and 140 of 2018, the operative part of this judgment reads as under:-

*“7.16 In light of the above, we are of the considered opinion that Central Commission has not considered the IEDC for the reference assets correctly in line with provisions of its own regulations which cannot be sustained in the eyes of law. In catena of judgments of Hon’ble Supreme Court and this Tribunal, it has been held that the Regulations framed by the Commissions are binding for all stakeholders including the Commission itself. The Regulations framed under the Act, in no way, mandate the Central Commission to restrict the IEDC to 5% of the original estimated hard cost.*

*7.17 Accordingly, we hold that IEDC should be computed only on actual basis after due prudence check based on the data submitted by the Appellant in accordance with the Tariff Regulations.*

## ORDER

*For the forgoing reasons, we are of the considered view that issues raised in the present appeals being Appeal Nos. 95 of 2018 & 140 of 2018 have merits and hence appeals are allowed.*

*The impugned orders dated 29.07.2016 in Petition No. 46/TT/2014 and order dated 05.10.2017 in Petition No. 02/RP/2017 passed by Central Electricity Regulatory Commission are hereby set aside to the extent challenged in the Appeal. The matter is remitted back to the Central Electricity Regulatory Commission with a direction to allow IEDC in accordance with the Tariff Regulations. No order as to costs.”*

23. In view of the above, we are of the considered opinion that since the Central Commission has already decided that the time over-run is not attributable to the Appellant and the same is due to uncontrollable factors as specified in Regulation 12, IEDC should have been allowed as per actuals after due prudence check. The Central Commission should have examined the details furnished by the Appellant and done the prudence check in relation to the IEDC and only after doing the prudence check should have come out regarding the decision on the payment of IEDC due to time over-run. As regard to the contentions of the Respondent that these details were not furnished by the Appellant as made out by the UPPTCL/Respondent No. 19 and BRPL/Respondent No.13 in Appeal No. 445 of 2019 and submissions made by the Respondent No.5/TANGEDCO that no details/justification have been given by the Appellant in their petition, we will only say that the Central Commission being the regulator and being in the grip of the subject, specially the fact that while dispensing the order dated 04.02.2020



having gone by the judgment dated 02.12.2019 passed by this Tribunal and also the fact that entire details in regard to IEDC due to time over-run were provided along with the petition at Form 12-A, the submissions made by the UPPTCL/Respondent No. 19 and BRPL/Respondent No.13 in Appeal No. 445 of 2019 and submissions made by the Respondent No.5/TANGEDCO need not to be considered and accordingly the same are rejected.

24. In view of the above we are of the opinion that the matter need to be reconsidered by the Central Commission to examine the details furnished by the PGCIL/ the Appellant in regard to IEDC and then only pass the order regarding the payment of IEDC due to time over-run.
  
25. We also clarify here by way of this judgment that the express provision given in this Regulation 11 of Tariff Regulation 2014 of the CERC, there is absolute clarity in regard to the fact that the payment of IEDC on account of time over-run having been granted by the Central Commission is to be done as per actuals after prudence check by the Central Commission. The Central Commission should therefore examine all these justifications given by the Transmission Company or generating company in regard to the IEDC on account of time over-run as per the tariffs of the Tariff Regulation 2014 and should not cap it at normative value of 10.75% / 5% / 2.95% of the hard cost (RCE). This we are saying in view of the fact that the cost implication, if any, arising on account of factors beyond the control of the Transmission company/generating company due to time over-run need to be

reimbursed so as not to adversely affect the financial position of the Transmission/generating companies.

26. Accordingly, the Impugned orders dated 01.10.2019, 25.06.2019 and 01.11.2019 passed by the Central Electricity Regulatory Commission in Petition No. 268/TT/2018, in Petition No. 242/TT/2018 and in Petition No. 367/TT/2018 respectively, are hereby set aside to the extent of granting IEDC at 10.75% / 5% / 2.95 % due to time over-run, with the directions to the Central Commission to pass fresh orders in line with the opinion expressed in this judgment.
27. The Appeal No. 445 of 2019, Appeal No. 188 of 2020 and Appeal No. 224 of 2021 and pending applications, if any, stand disposed of in above terms. No order as to costs.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO  
CONFERRING ON THIS 13<sup>th</sup> DAY OF SEPTEMBER, 2021.**

**(Justice R.K. Gauba)**  
**Judicial Member**

**(Ravindra Kumar Verma)**  
**Technical Member**

√  
**REPORTABLE/NON-REPORTABLE**  
mk